IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.147/2002

Mrs. Helena Braganza, age 70 years,
wife of late Mr. Caetano Braganza,
r/at House No.145, Adaowaddo,
Majorda, Salcete, Goa. ..... Applicant.

V/s.

1. Mrs. Escolastica Braganza,
w/o late Mr. Ismael Braganza,
age 83 years, housewife, r/at.
House No.416, Sanglea Vaddo,
Majorda, Salcete, Goa.

2. Mrs. Antoneita Braganza,
age 56 years, d/o. late Ismael
Braganza, r/at H.No.416,
Sanglea Vaddo, Majorda, Salcete, Goa. ..... Respondents.

Mr. Nitin Sardessai, Advocate for the applicant.

Mr. C. Mascarenhas, Advocate for the respondents.

CORAM : P.V. HARDAS, J.

DATE : AUGUST 17, 2002.

ORAL JUDGMENT :

By consent of parties, this Civil Revision is taken up for final disposal at the stage of admission.

2. This Civil Revision Application takes exception to an order passed by the Addl. District Judge, South Goa, Margao, dated 10.10.2001 in Misc. Civil Appeal No.108/2001, quashing and setting aside the order passed by the Civil Judge Jr. Division, at Margao, on Civil Misc. Applications No.470/2001/C and 471/2001/C,

dismissing the application for temporary injunction filed by the respondents/original plaintiffs. Thus, the respondents/original plaintiffs, being aggrieved by the aforesaid order of the learned Civil Judge, Jr. Division, Margao, dated 15.9.2001, had filed Misc. Civil Appeal No.108/2001, before the Addl. District Judge, South Goa, Margao. The learned lower appellate Court, by the impugned Order, had quashed, set aside the order of the learned trial Court, and had allowed the application under Order 39, Rules 1 and 2 C.P.C., filed by the respondents/original plaintiffs, restraining the present applicant/original defendant from making any construction in the suit property, pending decision of the suit.

3. I have heard Mr. Nitin Sardessai, learned Counsel appearing for the applicant and Mr.Uday Naik and Mr. C. Mascarenhas, learned Counsel appearing for the respondents. It is an undisputed fact that the present applicant is carrying on the construction on the basis of a licence to reconstruct, issued by the Village Panchayat. Whether the construction which is carried on by the applicant/defendant is in reality a new construction or it is a reconstruction after demolition of the earlier premises, is a question which will have to be determined on the basis of the evidence that would be led by the parties. Undeniably, the applicant/ defendant is a co-owner of the suit property. The partition between the parties is yet to be effected. By the time the

application of the respondents/plaintiffs came up for consideration before the learned trial Court, the construction on the basis of a licence issued by the Village Panchayat, had already commenced as is evident from the photographs which were produced by the parties before the learned trial Court and which were also produced before this Court for my perusal.

4. Since the construction had already begun and the applicant/petitioner is a co-owner of the suit property, according to me, the balance of convenience will not lie in favour of the respondents/plaintiffs in trying to injunct the applicant/defendant from carrying on the construction, in peculiar facts of the case. The applicant/defendant will certainly be prejudiced if, ultimately, the suit is dismissed and she is required to carry on the construction after the decision of the suit, as in the meanwhile the costs of the construction would escalate. According to me, interest of the parties can be protected if an undertaking is obtained from the applicant/defendant that she would carry on the construction at her own risk, subject to result of the suit filed by the respondents/plaintiffs.

5. The applicant/defendant has, accordingly, filed an undertaking, whereby she undertakes to carry on the construction at her own risk, subject to result of the Regular Civil Suit No.236/2001/C. In the undertaking, the

applicant/defendant has also undertaken to demolish the construction, subject to the legal remedy available for challenging the said order. The applicant/defendant has also undertaken to demolish the said construction at her own costs and would not claim any equity under any circumstances.

6. In view of the undertaking which is given to this Court, according to me, the rights of the parties to the litigation, are protected and accordingly, the Judgment and Order of the Addl. District Judge, South Goa, Margao dated 10.10.2001 in Misc. Civil Appeal No.108/2001 is, hereby, quashed and set aside. The applicant/defendant to give a similar undertaking before the learned trial Court within two weeks from today.

7. In view of the aforesaid discussion, Civil Revision Application No.147/2002 is, allowed and the applicant/defendant is directed to file an undertaking before the learned trial Court within two weeks from today. No costs. C.C. expedited.

P.V. HARDAS, J.

ssm.